

**MINUTES OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING  
FEBRUARY 28, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 28, 2005 in the City Council Chamber of the Melvin Municipal Office Building , commencing at 2:00 p.m. The following members were present: Hugh Holston, Ann Buffington, John Cross and Janet Wright. Bill Ruska, Zoning Administrator, and Blair Carr, Esq. from the City Attorney's Office were also present.

**WELCOME**

Chair Hugh Holston welcomed everyone to the February meeting of the Greensboro Board of Adjustment. He explained the procedures of the Board and the procedures for appealing any ruling made by the Board. He pointed out that when there are only four members present, as today, any applicant has the option of requesting, prior to the hearing of their matter, a one-time continuance for any variance, Special Exception, appeal of a Historic Preservation Commission decision with respect to a Certificate of Appropriateness, or an Interpretation request.

**APPROVAL OF MINUTES OF LAST MEETING**

Ms. Wright moved approval of the January 24, 2005 meeting as written, seconded by Ms. Buffington. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

Mr. Ruska was sworn in for all testimony to be given at the meeting. In response to a question by Chair Holston, Mr. Ruska stated that BOA-05-05, 4007 Donegal Drive should be continued because of advertising issues; BOA-05-06, 702 Waycross Drive was continued because of difficulty obtaining all the easement releases; for BOA-05-10, 1013 Union Street and BOA-05-11, 810 Lexington Avenue, staff is asking that these matters be continued. Counsel Carr explained that these two properties are subject to demolition orders.

**OLD BUSINESS**

**VARIANCE**

- (A) BOA-05-05: 4007 DONEGAL DRIVE MICHAEL AND SANDRA HORLICK REQUEST VARIANCES FROM TWO MINIMUM SIDE SETBACK REQUIREMENTS. THIS CASE WAS CONTINUED FROM THE JANUARY 24, 2005 MEETING. VIOLATION #1: AN EXISTING CARPORT, WHICH HAS BEEN ATTACHED ONTO THE EASTERN SIDE OF THE HOUSE, ENCROACHES 2.1 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-61. VIOLATION #2: AN EXISTING STORAGE SHED, WHICH HAS BEEN CONSTRUCTED ONTO THE WESTERN SIDE OF THE HOUSE, ENCROACHES 4 FEET INTO A 5-FOOT SIDE SETBACK TABLE 30-4-6-1. PRESENT ZONING-RS-9, BS-153, CROSS STREET-REHOBETH CHURCH ROAD. (CONTINUED)**

Mr. Wright moved to continue this item, seconded by Mr. Kee. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

- (B) BOA-05-06: 702 WAYCROSS DRIVE NORMAN AND LAURIE REGAL REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE JANUARY 24, 2005 MEETING. VIOLATION: A PROPOSED ATTACHED GARAGE/ADDITION WILL ENCROACH 6 FEET INTO A 10-FOOT SIDE**

**SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-15, BS-78, CROSS STREET-MONMOUTH DRIVE. (CONTINUED)**

Mr. Cross moved that this item be continued, seconded by Ms. Wright. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

**NEW BUSINESS**

**VARIANCE**

- (A) BOA-05-07: 2700 BATTLEGROUND AVENUE R.G. VENTURES INC., REQUESTS A VARIANCE FROM THE MINIMUM STREET SETBACK REQUIREMENT. VIOLATION: AN EXISTING CANOPY ENCROACHES 14 FEET INTO A 15 FOOT STREET SETBACK ADJACENT TO MARTINSVILLE ROAD. TABLE 30-4-6-5, PRESENT ZONING-GB, BS-51, CROSS STREET- MARTINSVILLE ROAD. (CONTINUED)**

Patrick Downs, 426 W. Friendly Avenue, was sworn in and stated that he represents the applicant. The applicant wishes to ask for a continuance to the next monthly meeting for additional site analysis.

Mr. Cross moved to continue the matter at the request of the applicant, seconded by Ms. Buffington. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

- (B) BOA-05-08: 5601 GUIDA DRIVE DONNA WILLIAMS REQUESTS A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. VIOLATION: AN EXISTING PRIVACY FENCE EXCEEDS THE MAXIMUM HEIGHT OF 4 FEET BY 2 FEET WITHIN 15 FEET OF THE DOLLEY MADISON ROAD RIGHT-OF-WAY. SECTION 30-4-9.6(A), PRESENT ZONING-RS-12, BS-164, CROSS STREET- DOLLEY MADISON ROAD. (CONTINUED)**

Donna Williams stated that she would request that this matter be continued to the March meeting.

Ms. Wright moved that this matter be continued at the request of the applicant, seconded by Ms. Buffington. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

- (C) BOA-05-09: 2714 HOLLY DRIVE SARAH CROUSE REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A PROPOSED ATTACHED GARAGE TO A SINGLE-FAMILY DWELLING WILL ENCROACH 3 FEET INTO A REQUIRED 10-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-12, BS-52, CROSS STREET- LESLIE ROAD. (GRANTED)**

Mr. Ruska stated that Sarah Crouse is the owner of a parcel located at 2714 Holly Drive. The lot is located on the eastern side of Holly Drive south of Leslie Road on zoning map block sheet 52. The lot contains a single family dwelling. The applicant is proposing to enclose and add on to an existing attached carport. The carport encroaches 3 feet into a required 10 foot side setback. The addition to the rear of the carport will also encroach 3 feet into a required 10 foot side setback. The applicant has stated the proposed enclosure and addition will be used for garage and storage space. The existing carport is approximately 14 feet wide and 21 feet long. There is a concrete pad area beyond the carport area that the applicant is proposing to develop and attach to the house. This area is approximately 22 feet by 9 feet and will be attached to the dwelling. This addition will remain within the same setback as the existing attached carport. The total enclosure and addition will contain

approximately 634 square feet. The applicant has stated the carport has been there for many years and was constructed prior to the adoption of the 1992 Ordinance. The Ordinance prior to the 1992 version had different setback requirements. The previous zoning was Res 90S, and the setback then was 10 percent of the plot width or a minimum of 5 feet. The lot has 90 feet of lot width so the minimum side setback would have been 9 feet. The zoning office does not have any records that indicate a previous variance was ever requested for this property. The lot is currently zoned RS-12. The adjacent properties are also zoned RS-12.

Sarah Crouse, the applicant, was sworn in and stated that she had information to present to the Board. She stated that because of the house location and configuration, there is nowhere else to place the attached garage. The house was built in the 1960s and the hardship is the direct result of the change in the zoning ordinance rather than any personal action. Several homes in the neighborhood appear to have less than the present required side setbacks. She feels this request would be in harmony with the character of the neighborhood and compatible with the area.

There was no one present wishing to speak in opposition to the request.

After some discussion Ms. Buffington moved to incorporate the stated findings of fact and that the Zoning Enforcement Officer be overruled and the variance granted based on the following: if the applicant complies with the provisions of the ordinance he or she can make no reasonable use of this property, the hardship of which the applicant complains results from unique circumstances related to the applicant's property, the hardship results from the application of this ordinance to this property because it prevents her from having an enclosed garage with storage, the hardship is not the result of the applicant's own actions, the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it appears that there are other homes in the neighborhood that have done the same thing, the granting of the variance preserves the public safety and welfare and does substantial justice because it is a safe structure and will improve the quality of the main structure and property values within the neighborhood, seconded by Ms. Wright. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

**(D) BOA-05-10: 1013 UNION STREET BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM REAR SETBACK REQUIREMENT. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 0.5 FEET INTO A 20-FOOT REAR SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET- LEXINGTON AVENUE. (CONTINUED)**

Mr. Cross moved that this matter be continued to the March meeting, seconded by Ms. Buffington. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

**(E) BOA-05-11: 810 LEXINGTON AVENUE BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 3.5 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET- UNION STREET. (CONTINUED)**

Mr. Cross moved that this matter be continued to the March meeting, seconded by Ms. Buffington. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

**SPECIAL EXCEPTION**

**(A) BOA-05-12: 310 WEST BESSEMER AVENUE R. PRESTON AND MARLENE LENTZ REQUEST A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B)2) TO ALLOW A DETACHED ACCESSORY BUILDING TO ENCROACH INTO A REAR AND SIDE SETBACK. THE PROPOSED ACCESSORY BUILDING WILL ENCROACH 8 FEET INTO A REQUIRED 10-FOOT REAR SETBACK AND 4.8 FEET INTO A REQUIRED 5 FOOT SIDE SETBACK. THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. PRESENT ZONING-RS-9, BS-2, CROSS STREET VIRGINIA STREET. (GRANTED)**

Mr. Ruska stated that R. Preston and Marlene Lentz are the owners of a parcel located at 310 West Bessemer Avenue. This lot is in the Fisher Park Historic District. The applicant was granted a Special Exception at the December 22, 2003 BOA meeting to add a 12 foot x 24 foot bay onto the existing garage. Since the applicant is now proposing to rebuild the entire garage along with a bay addition a new Special Exception request is required. The lot is located on the northern side of West Bessemer Avenue west of Virginia Street on zoning map block sheet 2 and is currently zoned RS-9. The applicant is requesting a special exception to replace an existing garage on the same footprint and to add another bay. The existing encroachments will not increase. The bay addition is also proposed to encroach into the rear setback the same as the proposed rebuilding of the existing garage, which encroaches 8 feet into a 10-foot rear setback and 4.8 feet into a 5-foot side setback. The bay addition is proposed to be 7 feet by 24 feet. The existing garage that is proposed to be rebuilt is 22 feet by 24 feet. The total detached square footage for the garage will be 696 square feet. The two-story dwelling contains approximately 2,800 square feet, so the square footage of the building will be well below the fifty percent rule. The lot is rectangular in shape. The lot has 80 feet of width and 150 feet of depth containing approximately 12,000 square feet of lot area. At their October 27, 2004 meeting, the Historic Preservation Commission approved the application and registered their support of the special exception request. Each member's packet contains a copy of the memorandum. The adjacent properties located to the east, west, and south sides of West Bessemer Avenue are also zoned RS-9. The adjacent property located to the north is zoned GO-M.

Marlene Lentz, 310 W. Bessemer Avenue, was sworn in and stated that they will be building a compatible building with new building materials, it will look the same as the structure originally there. The property is well screened and the new structure will have very little impact on surrounding properties.

After some discussion, Ms. Wright moved that the information received shall be incorporated as the stated findings of fact and that the Zoning Enforcement Officer be overruled and the Special Exception be granted based on the following: because the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit, as well as assures public safety and welfare and does substantial justice primarily as a result of the fact that this is simply replacing an existing structure on the property with a new and improved structure that has already been approved by the Historic Preservation Commission, seconded by Ms. Wright. The Board voted 4-0 in favor of the motion. (Ayes: Holston, Wright, Buffington, Cross. Nays: None.)

Mr. Ruska presented a handout that was delivered to Zoning Enforcement Officers that attended the winter meeting of the North Carolina Association of Zoning Officials. There were two cases that were decided by the North Carolina Court of Appeals which have some bearing on the Board's deliberations.

Counsel Carr stated that it has been determined that a recitation of the ordinance is not sufficient as a basis to grant a variance. It is necessary to at least say something about the facts to support each and every test that is required to be met.

Counsel Carr noted that in the early 1990s, Christy's Cabaret was being operated as a sexually oriented business and in front of that building was a restaurant within the same structure. The restaurant ceased operation and that area was opened as an adult novelty store. That violated the zoning ordinance and it was brought back before the Board and it was determined that the business was in violation. This was appealed to Superior Court and several other Courts and the business lost their appeals. In 1998 the City Attorney's office tried to enforce that order and through a technicality, the Court decided not to issue any type of stay or relief. Because of the closeness of the two businesses they could not obtain a business license and they filed suit and lost all those cases also. In June of 2004 that order became final and effective the 15<sup>th</sup> of February, they were placed under a temporary restraining order to cease operations and that order has now been turned into a preliminary injunction. They are ceasing their operations and the Legal department is waiting until there is a hearing to decide whether both of those orders are still in place. If that is the case, they will be permanently enjoined.

The absence of Mr. Pinto and Mr. Kee were noted.

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There being no further business before the Board, the meeting was adjourned at 3:03 p.m.

Respectfully submitted,

Hugh Holston, Chair  
Greensboro Board of Adjustment

HH/ts/jd